

Statement of Substance of Interview under 37 C.F.R § 1.133

Applicants submit this Statement of Substance of Interview in accordance with 37 C.F.R § 1.133 to be made of record for the application for patent identified herewith and respectfully requests entry of the statement as set forth herein.

Applicants again wish to thank the Examiner for participating in a telephone interview on March 11, 2008, held between the Examiner and Applicants' representative. The Examiner was most courteous and provided insight as to the basis for the rejection of the previously submitted declaration under 37 C.F.R. 1.131. Applicants' representative informed the Examiner that the Exhibits submitted by mail on September 7, 2007, were clear and distinct and provided on photo quality paper. However, the Examiner stated that the copies when scanned by the USPTO were unclear and indistinct, which was the reason for the statement made by the Examiner that the evidence failed to show a concave-convex articulating surface as claimed. The Examiner also suggested that the declaration should indicate what claims are supported by the exhibits.

This is intended to be a written statement as to the substance of a telephone interview held on March 11, 2008.

The paper submitted herewith is responsive to one or more items discussed during the interview held on March 11, 2008.

Remarks/Arguments

Claims 19-42 are pending. Claims 1-18 were previously canceled. With this paper, Applicants cancel without prejudice Claim 20.

On page 2 of the Office Action mailed November 19, 2007, the Examiner rejected a declaration under 37 C.F.R. 1.131 submitted on September 7, 2007. Applicants, having spoken with the Examiner on March 11, 2008, understand that the Examiner was unable to determine details in the previously submitted Exhibits because the scan quality of said documents was very poor. Applicants with this paper, submit a new Declaration document with Exhibits in which factual evidence and statements are provided that are not mere pleadings unsupported by proof. The Declaration document and accompanying Exhibits are believed sufficient to show actual reduction to practice of the invention prior to the earliest effective date of Zubok et al. (U.S. Application Publication No. 2004/0176850; herein "Zubok") and Feree et al. (U.S. Application Publication No. 2005/0267582; herein "Feree").

On page 3 of the Office action, the Examiner states that newly submitted Claims 37-41 are directed to an independent invention because "the product as claimed can be used in a materially different process of using wherein the product is used as a teaching device or used in a testing method." Applicants have withdrawn Claims 33 and 37-41. However, Applicants have amended Claim 37 to correspond with amendments in Claims 19 and/or 31 and respectfully request such claims be reconsidered for rejoinder in view of the fact that the process of using the product of Claim 37 may not be practiced with another materially different product because the product of Claim 37 includes materially the same product as claimed in Claim 19. There is no limitation in Claim 19 that the product of the claim would necessarily be used in a materially different process. Claim 37 is also materially similar to canceled Claim 15, which has already been examined on the merits by the Examiner. Accordingly, Applicants submit that the Examiner has already admitted on the record that examination of Claims 37-41 can be made without a serious burden.

On page 4 of the Office action, the Examiner rejected Claims 20, 23 and 25 under 35 U.S.C. 112, first paragraph, for including new matter. Applicants with this paper have cancelled

Claim 20. Applicants respectfully point out that “substantially planar” finds support in paragraph [0015] of the as-filed application. For Claim 25, Applicants respectfully point out that “features for bone ingrowth” find support in paragraphs [0014] and [0022] of the as-filed application. Ingrowth is provided in the claim as a preferred spelling of the term. Applicants respectfully request the rejection under 35 U.S.C. 112, first paragraph, be removed.

On page 5 of the Office Action, the Examiner rejected Claims 20-30 for being indefinite. Applicants have amended Claims 21-30 to include proper antecedent basis. Applicants respectfully request the rejection under 35 U.S.C. 112, second paragraph, be removed.

On page 6 of the Office Action, the Examiner rejected several claims under 35 U.S.C. 102(e) as being anticipated by Zubok. On page 7 of the Office Action, the Examiner rejected several claims under 35 U.S.C. 102(e) as being anticipated by Feree. Applicants submit a declaration under 37 C.F.R. 1.131 and believe that the declaration and its exhibits are sufficient to remove the Zubok and Feree as references under 35 U.S.C. 102(e).

Also on page 6 of the Office Action, the Examiner rejected the independent claims and many of their dependents under 35 U.S.C. 102(b) as being anticipated by Shelekov et al. (U.S. Patent No. 6,039,763; herein “Shelekov”). With this paper, Applicants respectfully enter amendments to the independent claims, Claims 19, 31, 37 and 42, each of which is amended to include one surface that is an articulating concave-convex surface associated with a hyperbolic paraboloid shape. Support for the amended claims may be found in the application as filed, including paragraphs [0026] to [0030]. Applicants submit that Shelekov does not anticipate the amended claims because Shelekov does not teach or suggest an articulating surface associated with or having a hyperbolic paraboloid shape. Instead, Shelekov explicitly describes a two component device requiring a first plate 1 and a second plate 10. The two plates and their respective surfaces are clearly shown by Shelekov in FIG. 1b (first plate 1) and FIG. 2b (second plate 10), and are provided on the next page for reference.

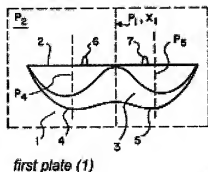


FIG. 1b

laterally juxtaposed convex portions (4,5)

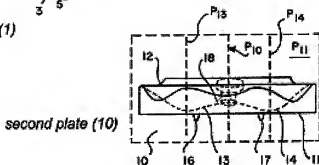


FIG. 2b

laterally juxtaposed concave portions (13,14)

Applicants respectfully point out that first plate 1 of Shelekov is explicitly described and shown as having laterally juxtaposed convex portions (4, 5). As described explicitly by Shelekov, first plate 1 is defined as “bimodal convex-shaped” surfaces (Col. 3, ll. 19-20; Col. 5, ll. 55-56; Col. 6, ll. 33-37; Claims 8, 9, 13, 18, 19, 20). The two convex surfaces on the first plate 1 articulate with two laterally juxtaposed concave portions (13, 14) of second plate 10, which are explicitly defined by Shelekov as “bimodal concave-shaped” surfaces (Col., l. 25; Col. 5, ll. 56-57; Col. 6, ll. 38-44; Claims 8, 9, 13, 18, 19, 20). Thus, as further taught explicitly by Shelekov, each plate has either two articulating concave surfaces OR two articulating convex surfaces. With Shelekov, the two convex articulating surfaces on one plate will articulate with the two concave articulating surfaces on the second plate. While Shelekov shows surfaces that undulates, Shelekov does not show an articulating surface with a hyperbolic paraboloid shape. Thus, Shelekov does not describe a disc body having a surface that is a concave-convex articulating surface, wherein the concave-convex articulating surface has a substantially hyperbolic paraboloid shape.

Articulation is clearly illustrated by Shelekov in FIG 4a, in which it is explicitly shown and taught that first plate 1 articulates with second plate 10, such that two convex surface

portions of first plate 1 are positioned to articulate with two concave surface portions of second plate 10. FIG 4a is provided on the next page for reference.

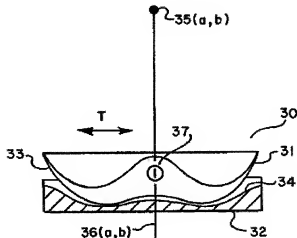


FIG. 4a

The above figures are evidence that neither the articulation or configuration as defined by Shelekov are equivalent to that claimed with the subject application. As such, Applicants have shown that Shelekov does not teach each and every element of Applicants' claimed invention; Shelekov does not teach a disc body having a first surface that is a concave-convex articulating surface, wherein the concave-convex articulating surface has a substantially hyperbolic paraboloid shape. Applicants submit that Shelekov cannot anticipate the claims. Applicants respectfully request the rejection relying on Shelekov under 35 U.S.C 102(b) be removed.

Conclusion

In light of the amendments and remarks presented with this paper, Applicants respectfully submit amendments to the claims as provided in the Listing of Claims beginning on page 3 of this paper. Applicants further submit such claims introduce no new matter and are believed to place the Application in condition for allowance.

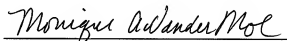
This paper is being filed concurrently with a Request for Continued Examination, a Petition for Extension of Time and the appropriate fees. Should any additional fees be due, Applicants herewith authorize the Commissioner to charge any additional fees, other than the issue fee, that may be required by this paper to Deposit Account 07-0153. Any overpayments should be deposited to the same deposit account.

Should the Examiner have any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Date: April 18, 2008

Respectfully submitted,

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